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November 1, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: IB Docket No. 00-106 ✓
Oral Ex Parte Presentation
Review of Commission Consideration of Applications under
the Cable Landing License Act

Dear Ms. Salas:

On November 1, 2001, Kerry Murray and Scott Shefferman, WorldCom, Inc., and Ruth Milkman, Lawler, Metzger & Milkman, counsel to Global Crossing, Ltd., met with Monica Desai, Peter Tenhula, Bryan Tramont, and Paul Margie. During these meetings, WorldCom and Global Crossing expressed the views summarized in the attached documents, which were provided to Ms. Desai, Mr. Tenhula, Mr. Tramont and Mr. Margie.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter and enclosures are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,



Ruth Milkman

cc: Monica Desai (w/o enclosures)
Peter Tenhula (w/o enclosures)
Paul Margie (w/o enclosures)
Bryan Tramont (w/o enclosures)

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List A B C D E

October 31, 2001

Position of WorldCom, Inc. Regarding “Review of Commission Consideration of Applications under the Cable Landing License Act (IB Docket No. 00-06)”

1. The Commission should streamline most cable landing license applications, but should retain its review of pro-competitive safeguards for a limited number of applications

- The submarine cable market is highly dynamic and competitive on many routes. The Commission should streamline all applications for new submarine cables on such routes.
- Some routes, however, remain only marginally competitive or non-competitive. Such conditions may not improve, and may even worsen, as consolidation among submarine cable owners and operators is occurs as a result of the economic downturn in these regions.
- The Commission should streamline wherever possible, but should actively review applications for proposed cables on non-competitive routes that do not include certain competitive safeguards. /

2. AT&T’s Proposed Dominant Carrier Safeguards Are Ineffective for Undersea Cables

- The Commission should not rely on AT&T’s competitive safeguards to protect U.S. consumers from competitive harm.
 - First, AT&T’s safeguards would only apply to applicants affiliated with dominant foreign carriers. AT&T, however, does not define who must be an applicant.
 - Second, the provisioning and maintenance and quarterly circuit status reports proposed by AT&T are largely ineffective for the relevant market in this case. By definition, the reports only address conditions after the cable is already in service. However, the critical period in the life of a cable system often is the 1-2 years before the cable is “ready for service,” as potential customers assess planned systems. By the time anti-competitive behavior is detected, any competition in the market may well be crushed.
 - Third, AT&T’s proposal that cable operators affiliated with dominant carriers “file reports of capacity conveyances within 30 days identifying the party to which capacity is conveyed, the amount and the price” is highly inadvisable. It is not clear how such disclosures of such highly sensitive competitive information for *all* customers would serve the public interest.
 - Fourth, the FCC’s “No Special Concessions” requirement is insufficient to address many of the competitive concerns at issue in this proceeding. For example, without providing any “special concessions,” a dominant foreign carrier can prohibit resale of

capacity, transfer to affiliates companies, the use of wholly owned capacity, etc. All of these types of restrictions hurt competition in the US market.

➤ Finally, violations of safeguards are extremely difficult to detect.

3. Maintenance of Pro-Competitive Safeguards for Submarine Cable Applications is Fully Consistent with the WTO Agreement

- The Commission concluded in its 1997 *Foreign Participation Order* (12 FCC Rcd 23,891) that the procedures for reviewing applications under the Submarine Cable Landing License Act adopted in that *Order* were fully consistent with the GATS and the WTO regime. See ¶¶ 352-361.
 - Specifically, the Commission agreed with USTR and AT&T that a licensing decision that is based solely on a carrier's market power and the potential adverse impact on competition in the U.S. is consistent with the most-favored-nation requirement (Article II) of the GATS. ¶¶ 352, 357.
 - The Commission also concluded that its licensing procedures and regulatory safeguards did not violate Article VI (Domestic Regulation) of the GATS because such procedures and safeguards were objective, transparent, impartial, and reasonable. ¶ 347.
- The rules and procedures for submarine cable landing license applications that were addressed in the *Foreign Participation Order* are the very same ones currently in effect.
- Further streamlining those WTO-consistent rules and procedures, as proposed in the submarine cable proceeding, would not run afoul of the WTO and GATS.

REVIEW OF COMMISSION CONSIDERATION OF APPLICATIONS UNDER THE CABLE LANDING LICENSE ACT (IB DOCKET NO. 00-06)

Summary of WorldCom's Proposal:

1. Presumptively Competitive --

The Commission should adopt a list of submarine cable routes that are presumptively competitive. In order for an applicant for a Cable Landing License to obtain streamlined processing, the applicant would certify that the foreign landing point or points of the proposed cable are on the Commission's list of "presumptively competitive routes;" OR

2. Where Non-Presumptively Competitive –

a) Certification of Non-Dominant Control of Foreign-End Facilities

Cable Landing License applicant or applicants certify that neither the cable landing station or stations nor backhaul at the foreign end are 50 percent or more controlled by a carrier with market power in the relevant foreign market. In determining whether a foreign entity has market power, the applicant would refer to the Commission's existing list of foreign carriers with market power; OR

b) Certification of Pro-Competitive Conditions

In the alternative, if the applicant cannot or does not certify either that the foreign landing points are presumptively competitive or that the foreign landing stations and backhaul are controlled by a non-dominant foreign carrier, then streamlining should be available where the applicant makes a showing that the proposed cable contains the following pro-competitive conditions:¹

- 1) Collocation at the cable landing stations, direct access to capacity ownership in the system, and no restrictions on who can provide backhaul;
- 2) Capacity on the cable can be upgraded, where upgrades are technically feasible, by either a 51 percent vote of the owners or any group of owners voting to fully fund the cost of the upgrade;
- 3) No unreasonable restrictions on the resale, lease or transfer of capacity, or any other transfer of an owner's rights in the cable, to third parties; and
- 4) No restriction on the use of wholly owned circuits by owners or third parties.

3. Non-Streamlined Applications – Same as current application review process.

¹ Provides an opportunity for streamlining where the proposed cable would, for example, serve a thin route or include landing station owners that have market power in their home markets.

	NPRM ⁱ	JUS ⁱⁱ	SAm-1 ⁱⁱⁱ	AJC ^{iv}
Landing Stations & Backhaul/ Collocation	<p>2 alternatives:</p> <p>A) Allow sufficient collocation at a landing station with no restrictions on who can provide backhaul - <i>para. 41</i>;</p> <p>B) Require specific demonstrations that:</p> <ol style="list-style-type: none"> 1) sufficient space at all landing stations will be made available to any other owner for the purpose of collocating equipment to provide backhaul 2) all owners may use such space for the provision by them of backhaul services to others; and 3) there will be no restrictions on the ability of any owner to subcontract the provision of backhaul - <i>para. 42</i> 	<p>Landing party shall provide sufficient space at all landing stations to any other owner for the purpose of collocating equipment to provide backhaul. - <i>para. 28</i></p> <p>"Space, connection facilities and necessary services shall be provided promptly and without discrimination." - <i>para. 28</i></p>	<p>Make capacity on the SAm-1 cable available, on a nondiscriminatory basis, to all customers, including all information service providers, licensed carriers, and others - <i>para. 17(6)</i></p> <p>Provide a standard cable capacity lease agreement to the FCC. - <i>para. 17(7)</i></p> <p>Allow unaffiliated parties to provide backhaul capacity and permit, on a nondiscriminatory basis, collocation space in the cable landing stations as well as access to cable capacity and backhaul. - <i>para. 17(7)</i></p>	<p>Landing parties must provide backhaul services on a nondiscriminatory basis to cable users. - <i>para. 21.</i></p> <p>Provide capacity users direct interface access (if requested by the user) to the cable network's interface as well as the ability to collocate their own equipment on commercially reasonable and non-discriminatory terms at the cable stations in order to access the AJC network. - <i>para. 28 (14)</i></p>

	NPRM	JUS	SAm-1	AJC
Arrangement Re: Capacity Upgrades	Allow the capacity of a cable to be upgraded either by a 51% vote of the owners or by any group of owners voting to fully fund the cost of the upgrade - <i>para. 47</i>	A vote of only half of the total voting interests is necessary to approve the final upgrade of capacity. This reduction of the voting requirement reduces the likelihood of a delay in the upgrade by increasing the number of major carriers required to block an upgrade decision. - <i>para. 31</i>		
Restrictions On Resale	No restrictions on resale or transfer of capacity and no restrictions on parties reselling their ownership shares and/or reselling or leasing their rights on the cable. No unreasonable charges assessed on owners wishing to resell or transfer capacity or ownership shares, or wishing to resell their rights on the cable. - <i>para. 48</i>	Notes that there are no restrictions on the ability of the network administrator or the individual owners of Japan-US capacity to sell capacity. - <i>para. 41</i>	The standard cable capacity lease agreement allows for unrestricted resale or transfer of cable capacity. - <i>para. 17 (6)</i>	
Combining Capacity	Allow smaller firms to combine their capacity requirements for the purpose of obtaining volume discounts. - <i>para. 49</i>			

	NPRM	JUS	SAm-1	AJC
No Special Concessions With Foreign Carriers		FCC rules prohibit any US carrier from accepting exclusive arrangements from any carrier with market power in Japan where those arrangements involve services, facilities, or functions in Japan that are necessary for the provision of basic telecom services. <i>See para. 34; 47 CFR § 63.14</i>	Prohibits the licensee from either directly or indirectly accepting or offering to an affiliated dominant carrier or foreign landing station owned by an affiliated dominant carrier in Argentina, Chile, or Peru a "special concession," as that term is defined in <i>47 C.F.R. § 63.14(b)</i> . - <i>para. 17(3)^v</i>	Prohibits the licensee from either directly or indirectly accepting or offering to an affiliated dominant carrier or foreign landing station owned by an affiliated dominant carrier in Australia a "special concession," as that term is defined in <i>47 C.F.R. § 63.14(b)</i> . - <i>para. 28 (12)</i>

	NPRM	JUS	SAm-1	AJC
Reporting Requirements For Non - Common Carriers			<p>Requires:</p> <p>1) Quarterly circuit status reports;</p> <p>2) Quarterly reports re: network facilities and services (containing the information required in 47 C.F.R. § 63.10(c)(4); and</p> <p>3) Reports (within 30 days after conveyance of transmission capacity on the Sam-1 cable system) identifying the party to whom capacity was conveyed & amount & price of capacity</p> <p><i>See para. 17.</i></p> <p>FCC concluded that it is appropriate to license SAm-1 on a non-common carrier basis, but with certain common-carrier-like conditions designed to detect and deter anti-competitive activity detrimental to U.S. consumers.</p> <p>- <i>para. 17(10)</i></p>	<p>Requires quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the Licensee's dominant affiliates and foreign cable landing stations owned by AJC Guam's dominant affiliates in Australia (containing the information required in 47 C.F.R. § 63.10(c)(4). - <i>para. 28 (13)</i></p> <p>FCC concluded that it is appropriate to license AJC on a non-common carrier basis, but with certain common-carrier-like conditions designed to detect and deter anti-competitive activity detrimental to U.S. consumers.</p> <p>- <i>para. 23</i></p>

	NPRM	JUS	SAm-1	AJC
Other Language				<p>In order to promote the expansion of capacity and facilities-based competition and reduce the risk of competitive harm to U.S. consumers and competitive providers along the AJC Guam Route, the FCC considered these factors:</p> <p>1) AJC Guam's foreign affiliates in Japan are small carriers with < 50% of market share in any of the key markets for providing international services in Japan; and</p> <p>2) NTT is the dominant LEC in Japan, but NTT's indirect 10% interest in AJC-Guam does not constitute <i>affiliation</i> within the meaning of 47 C.F.R. § 63.09(e). <i>See para. 19 (FN 55).</i></p>

ⁱ *Review of Commission Consideration of Applications Under the Cable Landing Licensing Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, FCC 00-210, 2000 WL 801160 (rel. June 22, 2000).

ⁱⁱ *AT&T Corp. et al, Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan*, File No. SCL-LIC-19981117-00025, Cable Landing License, FCC 99-167, 14 FCC Rcd 13,066 (rel. July 9, 1999).

ⁱⁱⁱ *Telefonica SAM USA, Inc. and Telefonica SAM de Puerto Rico, Inc., Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Network Extending Between Florida, Puerto Rico, Brazil, Argentina, Chile, Peru, and Guatemala*, File No. SCL-LIC-20000204-00003, Cable Landing License, DA 00-1826, 15 FCCR 14,915 (rel. Aug. 10, 2000).

^{iv} *Australia-Japan Cable (Guam) Limited, Application for License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between Australia, Guam, and Japan*, File No. SCL-LIC-20000629-00025, Cable Landing License, DA 00-2758, 15 FCCR 24,057 (rel. December 8, 2000).

^v Section 63.14 of the Commission's rules prohibits any U.S. carrier authorized to provide international service from agreeing to accept special concessions from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power at the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future. See para. 17(2); 47 C.F.R. 63.14(b).